IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5725 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TUSHAR PA SANGHVI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5725 of 2003

MR VIMAL M PATEL for Petitioner No. 1

MR SS PATEL, APP for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/08/2003

ORAL JUDGEMENT

The petitioner has preferred this petition under

Section 482 of the Code of Criminal Procedure, 1973 for quashing Criminal Case No.374/2003 filed by the contesting respondent against the petitioner, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The petitioner has contended that the complaint is bad in law on certain grounds. The learned advocate for the petitioner has argued that the two cheques involved in the complaint, dated 14/05/02 and 25/05/02 were presented before the bank on 14/11/02. Now, as the first cheque was presented to the bank after the expiry of six months, the respondent had committed violation of the requirement of law that the cheque was required to be presented within six months. However, so far the second cheque is concerned, this argument is not available as it has been filed within six months. In that view of the matter, it would not be open to this Court to quash this complaint.

3. It has then been contended that the Notice issued by the contesting respondent contains demand of money due on both cheques. He also argued that two separate notices have not been issued. I am not shown any law requiring the contesting respondent to issue two separate notices for two separate cheques. Even, composite demand cannot be treated to be illegal. It has also been contended that bailable warrant has been issued against the petitioner. Now, if the petitioner did not appear on a particular date and bailable warrant was issued by the trial court, the petitioner cannot make any grievance against it.

4. The learned advocate for the petitioner has also contended that the petitioner is not a partner and therefore, he is not responsible or liable to pay the amount in question to the respondent. On going through the cause title of the complaint, it is narrated in the cause title itself that the petitioner had been shown as a partner and a constituted attorney of the partnership firm. In view of the above position, the above contention cannot stand for a minute. The learned advocate for the petitioner has referred to the Partnership Deed produced by him at page 31. This will be a document which is required to be proved in accordance with law and this is not the stage at which the document can be looked into by this Court in this matter. The learned advocate for the petitioner states that the cheque has been signed by the petitioner, as a Manager of the firm. This would again be a question of fact. When the petitioner is shown to be the signatory

of the cheque, then there is hardly any ground for quashing the complaint.

5. In above view of the matter, there is no ground for quashing the complaint and therefore, the present petition is without any merit and it deserves to be dismissed.

6. For the foregoing reasons, this petition is dismissed at admission stage.

(D. P. Buch, J.)

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